

DEPARTMENT OR AGENCY NUMBER

DEPARTMENT OR AGENCY NAME

CONTRACT ROUTING NUMBER

**STATE OF COLORADO
INTELLECTUAL TECHNOLOGY MASTER AGREEMENT**

THIS CONTRACT, hereinafter referred to as “Contract” or “Agreement”, made this ____ day of _____ 200_, by and between the State of Colorado for the use and benefit of the Department of _____, (Division) (Address), hereinafter referred to as the “State” or “_____”, and _____ (Contractor) (Address), hereinafter referred to as “_____” or “Contractor”.

WHEREAS, authority exists in the Law, (Statutory Cite) and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this contract.

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate Agencies, and

WHEREAS, the State requires _____(brief description of SOW); and

WHEREAS, the Contractor has been selected in compliance with the provisions of the Procurement Code, (RFP/IFB #__) as the responsible offeror whose proposal is most advantageous to the State, price and other factors considered; and

NOW THEREFORE, it is hereby agreed that in consideration of the mutual covenants and agreements set forth and for other goods and variable consideration, the sufficiency of which is hereby acknowledged, the State and Contractor agree to the following terms and conditions.

1. Statement of Work. Contractor agrees to provide products and services as described in the Statement of Work (“SOW”), a copy of which is attached as Exhibit A and incorporated by reference as if fully set forth herein. The terms and conditions of Exhibit A hereby become contractual obligations of the parties.

2. Order of Precedence. The provisions of this contract shall govern the relationship of the State and the Contractor. In the event of conflicts or inconsistencies between this Contract and its Exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the following documents, incorporated into this contract, in the following order of priority:

- a. Colorado Special Provisions, contract pages __ to __.
- b. Contract, pages _ to _.
- c. Exhibit A, Statement of Work
- d. Exhibit B, Change Order
- e. Exhibit C, Option to Renew

3. Term of Contract. The term of this Contract shall become effective on (date) or upon signature of the State Controller or his designee, whichever is later, and unless sooner terminated as provided by the

terms of this Contract, shall remain in full force and effect (for the period of ____ year(s))(event)(date). The state may require continued performance for a period of ____ for any services at the rates and terms specified in the contract. The state may exercise the option by written notice to the contractor within ____ days prior to the end of the current contract term in a form substantially equivalent to Exhibit C.

If the state exercises this option, the extended contract will be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed ____.”

The Contractor understands and agrees that the State shall not be liable for payment of work or services or for costs or expenses incurred by the Contractor prior to the proper execution and State Controller approval of this contract.

4. Payment Terms. Unless otherwise provided, and where appropriate, the State shall establish billing procedures and pay the contractor the contract price or rate for services performed and accepted or supplies delivered and accepted pursuant to the terms of this contract, based on the submission of statements on forms and in a manner prescribed by the State. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds. Incorrect payments to the contractor due to omission, error, fraud, or defalcation shall be recovered from the contractor by deduction from subsequent payment under this contract or other contracts between the State and the contractor, or by the State as a debt due to the State.

The State shall make payment in full with respect to each invoice within [forty-five (45)] days of receipt thereof: provided that the amount invoiced represents goods and/or services which have been accepted by the State and the form of the invoice is acceptable to the State. Uncontested amounts not paid by the State with the [forty-five] days shall bear interest on the unpaid balance beginning with the [forty-sixth(46)] day at a rate of one percent per month until paid in full. A liability shall not arise if a good faith dispute exists as to the State’s obligation to pay all or a portion of the liability. The Contractor shall invoice the State separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate.

The payment for each deliverable shall be the contractually agreed upon amount minus a ____ percent (____%) holdback. All such amounts held in retention will be released upon final acceptance of the final project deliverable by the State. There will be no payments made for partial delivery within a contracted project deliverable. The final payment consisting of the remaining ____ percent (____%) of the total contract cost will be made upon acceptance of all Deliverables required by the Contract.

(For cost-reimbursement contracts) The State shall establish billing procedures and pay the Contractor the reasonable, allocable, and allowable costs for work performed and accepted under this contract, based on the State procurement rules governing allowability and allocability of costs and the submission of monthly statements in the format prescribed by the State. To be considered for payment, billings for payment pursuant to this contract must be received within 60 days after the period of which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.

5. Consideration. In consideration of contractor's services as described in this Contract, contractor shall be paid from available State funds an amount not-to-exceed price of (described in words)(\$_____) for the term of the contract. In no event shall the obligation of the State for the payment of consideration hereunder exceed the total sum of _____ (\$_____).

(For multiple fiscal year contracts, include the following): It is further understood and agreed that the maximum amount of State funds available for this contract for the period ____ to ____ (fiscal year ____) for the purchase of ____ is \$ _____. The liability of the State, at any time, for such payments shall be limited to the unexpended amount remaining of such funds.

(If using Federal funds) This contract is subject to and contingent upon the continuing availability of Federal funds for the purposes hereof.

(Optional language) Unless otherwise specifically enumerated, the above rates shall include all fees, costs and expenses, including, but not limited to labor costs, travel expenses, parts, service, repair, removal, replacement, mileage charges, supplies, mailing charges, installation, testing, communications, order and order tracking, reporting, debugging, analysis, delivery charges, and other expenses.

(Price Increases) Prices shall remain firm through _____, 200_. The Contractor may seek a price increase, not to exceed ____% of the then current price, in any succeeding period, by submitting detailed written justification to the State's representative as designated in the "Notices" section of this contract. Only one such increase will be allowed in any twelve-month period of this contract. Any request for increase must be submitted to the State's representative no less than ____ days prior to the proposed effective date of the increase and must be accompanied by the detailed justification. If an increase is requested and justification is not deemed acceptable by the State, an increase of less than ____% may be negotiated by the Contractor and the State. In the event the negotiations do not result in any agreement between both parties, this contract may be canceled and may be rebid with no penalty to the State.

6. Changes.

A. The state may increase the quantity of goods/services described in paragraph/schedule/exhibit at the unit prices established in the contract. The state may exercise the option by written notice to the contractor within ____ days before the option begins in a form substantially equivalent to Exhibit C. Delivery/performance of the goods/service shall continue at the same rate and under the same terms as established in the contract.

B. Bilateral changes within the general scope of the contract, as defined in Paragraph One above, may be executed using the change order letter process described in this paragraph and a form substantially equivalent to the sample change order letter attached as Exhibit B for any of the following reasons.

1. Where the agreed changes to the specifications result in an adjustment to the price, delivery schedule, or time of performance.
2. Where the agreed changes result in no adjustment to the price, delivery schedule, or time of performance. The change order shall contain a mutual release of claims for adjustment of price, schedules, or time of performance.
3. Where the changes to the contract are priced based on the unit prices to be paid for the goods and/or services established in the contract or Attachment ____.
4. Where the changes to the contract are priced equal to or less than established catalog generally extended to the public or on prices or rates set by law or regulation.

Other bilateral modifications not within the terms of this paragraph must be executed by formal amendment to the contract, approved in accordance with state law."

7. Legal Authority. The contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the contractor to its terms. The person(s) executing this contract on behalf of the contract warrant(s) that such person(s) have full authorization to execute this contract.

8. Fiscal Funding. The parties understand and agree that this contract is contingent upon the continuing availability of funds as provided in the second paragraph (2) of the Special Provisions hereinafter set forth, and that the State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. The State may terminate this contract as provided in the following paragraphs.

The State has reason to believe that sufficient funds will be available for the full term of the contract. Where, for reasons beyond the State's control, its funding entity does not allocate funds for any fiscal period beyond the one in which this contract is entered into, where the State has exhausted all efforts to obtain funds legally available for future fiscal periods, and the State's failure to obtain funds does not result from any act or failure to act on the part of the State, this contract shall be terminated without penalty and the State will not be obligated to make the payments remaining beyond the State's then current fiscal period, nor any penalty therefore. In that event, the State shall notify the Contractor in writing of such non-allocation of funds thirty (30) days prior to the effective date of termination.

To supplement the provisions of Special Provisions paragraph 2 of this contract regarding fund availability, and to make certain the understanding of the parties that this contract will extend beyond the current fiscal year, the State and the Contractor understand and agree that the obligation of the State to pay the annual charges hereunder constitutes a current expense of the State payable exclusively from the State's funds and shall not in any way be construed to be a general obligation of indebtedness of the State of Colorado or any agency or department thereof within the meaning of any provisions of sections 1, 2, 3, 4, or 5 of Article XI, Section 20 of Article X, of the Colorado Constitution or any other constitutional or statutory limitation or requirement applicable to the State concerning the creation of indebtedness. Neither the State, nor the Contractor acting on the State's behalf, has pledged the full faith and credit of the State or any agency or department thereof to the payment of the charges due under this contract, and this contract shall not directly or contingently obligate the State or any agency or department thereof to apply money from, or levy or pledge any form of taxation to, the payment of any charge due under the contract.

9. Termination for Cause. If, through any cause, the Contractor shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause. The State shall notify the Contractor of the Contractor's unsatisfactory performance of any term or condition of this contract by giving the Contractor written notice of the specific obligation the Contractor has performed unsatisfactorily. The Contractor shall, within thirty (30) days of receipt of such notice, to cure such unsatisfactory performance. If the Contractor fails to cure its unsatisfactory performance within such thirty (30) day period, the State may, within its sole discretion, either extend the period within which the Contractor may cure its performance by providing written notice of the specific extension period to the Contractor, or immediately terminate this contract by providing written notice of termination to Contractor.

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this contract shall, at the option of the State, become State property, and the Contractor shall be entitled to receive just and

equitable compensation for any services and goods delivered and accepted by the State. The Contractor shall be obligated to return any payment advanced under the provisions of this contract. This provision shall in no way limit other remedies available to the State in this contract, or remedies otherwise available at law.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of this contract by the Contractor, and the State may withhold any payment to the Contractor for the purpose of mitigating its damages until such time as the exact amount of damages due to the State from the Contractor is determined.

The State may immediately terminate this contract by providing written notice of termination to the Contractor if the Contractor's representative furnished any statement, representation, warranty, or certification in connection with the solicitation or award of this contract which is materially false, or deceptive. The State will not be liable for any costs incurred by the Contractor if termination is for any of these causes.

If after such termination it is determined, for any reason, that the Contractor was not in default, or that the Contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if this contract had been terminated for convenience, as described herein.

10. Force Majeure. Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promised contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure".

As used in this contract "force majeure" means fire, explosion, action of the elements, strike, interruption of transportation, government interference, rationing, court action, illegality, or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, could not have been prevented by the party affected. The existence of such causes of delay or failure shall extend the period for performance to such extent as may be necessary to enable the complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed. Nothing in this paragraph shall prevent the State from covering its requirements from another vendor during the period of delay.

11. Integration of Understanding. This contract is intended as the complete integration of all understanding between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to State Fiscal Rules.

12. Third Party Beneficiaries. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Contractor. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

13. Litigation. Contractor shall, as soon as possible but not later than five (5) business days after being served with a summons, complaint, or other pleading in a case which directly involves Products or Services provided by Contractor to the State under this Agreement and which has been filed in any

Federal or State court or administrative agency, deliver copies of such documentation to the Department of Personnel Executive Director.

14. Standard Insurance Requirements .

A. The contractor shall obtain, and maintain at all times during the term of this contract, insurance in the following kinds and amounts:

1) Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of contractor's employees acting within the course and scope of their employment.

2) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

a. \$1,000,000 each occurrence;

b. \$1,000,000 general aggregate;

c. \$1,000,000 products and completed operations aggregate; and

d. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

3) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

4) Professional liability insurance with minimum limits of liability of not less than \$_____.

B. The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

C. The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

D. The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

E. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

F. The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

G. Notwithstanding subsection A of this section, if the contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended (“Act”), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

15. Assignment. The Contractor agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under this contract] without the express written consent of the State [which shall not be unreasonably withheld]. Such consent may include, at the State’s sole discretion: 1) the execution by the State, the Contractor and the Assignee of a Novation Agreement in a form prescribed by the State, which Novation Agreement will become effective upon State approval or 2) verification by the State of the assignment. Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 49-318, CRS, provided that written notice of assignment of payment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this contract. Such assignment shall not be deemed valid until receipt by such controller – as distinguished from the State Controller – at the address as hereinafter provided below. The Contractor assumes the risk that such written notice of assignment is received by the controller for the agency, department, or institution involved.

16. Tax Exempt Status. It is hereby recognized and acknowledged by the Contractor that the State of Colorado is tax-exempt and is not liable for any sales, use, excise property or other taxes imposed by any federal, state or local government tax authority. The State of Colorado’s FEIN # is 840644739. The State of Colorado tax exemption number is 98-02565. The State is also not liable for any taxes of the Contractor for franchise or related to the income of the Contractor. No taxes of any kind shall be charged to the State.

17. Waiver. Any breach, default, or failure to perform any term or condition of this contract shall not be deemed waived or released by a party’s silence, and any such waiver or release shall not be effective unless made in writing by an authorized representative of the party making the waiver. The waiver of any term or provision of this contract shall not constitute waiver of a future breach, default or failure to perform for the waived term or provision, unless expressly provided in the written waiver. The waiver of any term or provision of this contract shall not constitute waiver of any other terms or provision of this contract not specifically addressed in the written waiver.

18. Severability. To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

19. Representatives and Notice.

- A. Representatives. For the purpose of this contract, the individuals identified below are hereby designated representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives:
- B. Authority. With respect to the representative of the State, such individual shall have the authority to _____, inspect and reject services, approve invoices for payment, and act

otherwise for the State, except with respect to the execution of formal contract amendments to or termination of this contract.

- C. All notices required to be given under this Agreement shall be hand delivered or sent by certified or registered mail to the individuals at the addresses set forth below or to such other addresses that the parties may specify in writing from time to time. Any such notice shall be deemed to have been received when delivered, if delivered in person, or five days subsequent to mailing.

If to the State:

STATE OF COLORADO

If to the Contractor:

20. Venue. Contractor agrees that for any action between the parties for claims concerning this Agreement shall be in the City and County of Denver, Colorado.

21. Events of Default. Any of the following events shall constitute an event of default ("Event of Default") hereunder: (a) State's failure to pay any payment of maintenance or any other payment required hereunder within 45 days after the due date; (b) Contractor's failure to perform or observe any covenant, condition, or obligation to be performed or observed hereunder, or breach in any document furnished to State in connection herewith, and such failure or breach continues unremedied for a period of 30 days after written notice thereof from State; (c) State's determination that any statement, representation, or warranty made by Contractor in this Agreement or in any other document by Contractor in connection herewith is false, misleading or erroneous in any material respect; or (d) the institution of proceedings under any bankruptcy, insolvency, reorganization or similar legislation, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, and such proceedings or appointments are not vacated or fully stayed within twenty days after the institution or occurrence thereof; or (e) defaults in the payment or performance of any other liability, indebtedness, contract, or other obligation of the Contractor.

22. Intellectual Property Rights. Materials (including but not limited to software, reports, data, or documents) prepared or developed exclusively for the State by Contractor pursuant to this Agreement which shall be deemed to be a work made for hire and shall be the exclusive property of the State. Any software, reports, data, manuals, or other documents, drawings or materials ("Works") prepared independently by the contractor but used in the performance of its obligations under this Agreement shall be subject to an irrevocable, nonexclusive, perpetual, paid-up, transferable license to the State to use, and permit others to use for State purposes. The use rights described herein shall include but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the "Works" only for the express purposes stated under this Agreement.

The State does not grant any licenses to Contractor to use any works made for hire or Intellectual Property developed under this Agreement. Contractor agrees that it will not provide to its other clients and customers, nor use in any way in the course of later engagements, the works made for hire and Intellectual Property created for and delivered to the State pursuant to this Agreement.

23. Patent And Copyright Indemnification. Contractor shall defend, at its sole expense, any claim(s) or suit(s) brought against the State alleging that the use by the State of any product(s), or any part thereof, supplied by contractor under this agreement constitutes infringement of any patent, copyright, trademark, or other proprietary rights, provided that the State gives contractor written notice within

twenty (20) days of receipt by the State of such notice of such claim or suit, provides assistance and cooperation to contractor in connection with such action, and contractor has sole authority to defend or settle the claim. Contractor shall consult the State regarding such defense and the State may, at its discretion and expense, participate in any defense. Should the State not choose to participate, contractor shall keep the State advised of any settlement or defense.

Contractor shall have liability for all such claims or suits, except as expressly provided herein, and shall indemnify the State for all liability incurred by the State as a result of such infringement. Contractor shall pay all reasonable out-of-pocket costs and expenses, and damages finally awarded by a court of competent jurisdiction, awarded or agreed to by contractor regarding such claims or suits.

If the product(s), or any part thereof, become the subject of any claim, suit or proceeding for infringement of any patent, trademark or copyright, or in the event of any adjudication that the product(s), or any part thereof, infringes any patent, trademark or copyright, or if the sub-license or use of the product(s), or any part thereof, is enjoined, contractor, after consultation with the State, shall do one of the following at contractor's expense: (i) produce for the State the right under such patent, trademark or copyright to use or sub-license, as appropriate, the product or such part thereof; or (ii) replace the product(s), or part thereof, with other suitable products or parts conforming to the original license and State specifications; or (iii) suitably modify the products, or part thereof. Except as otherwise expressly provided herein, contractor shall not be liable for any costs or expenses incurred without its prior written authorization.

Contractor shall have no obligation to defend against or to pay any costs, damages or attorney's fees with respect to any claim based upon: (i) the use of an altered release if contractor had not consented to the alteration, or (ii) the combination, operation or use of the product(s) with programs or data which were not furnished by contractor, if such infringement would have been avoided if the programs or data furnished by persons or entities other than contractor had not been combined, operated or used with the product(s), or (iii) the use of product(s) on or in connection with equipment or software not permitted under this contract if such infringement would have been avoided by not using the product(s) on or in connection with such other equipment or software.

If and to the extent such damage or loss as covered by this Indemnification provision is covered by the State of Colorado Tort Claims Fund (the "Fund"), Contractor agrees to reimburse the Fund. To the full extent permitted by the Constitutions and the laws of the State of Colorado and the terms of the Fund, Contractor and its insureds waive any right of subrogation against the State of Colorado, the Indemnities and the Fund and insurers participating thereunder, to the full extent of this indemnification.

24.Remedies. In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in the Agreement. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by Contractor. These remedial actions are as follows:

- a. Suspend Contractor's performance pending necessary corrective action as specified below by the State without the Contractor's entitlement to adjustment in price/cost or schedule; and/or
- b. Withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed and /or acceptable goods are provided; and/or
- c. Deny payment for those services or obligations that have not been performed and/or goods that have not been provided and which due to circumstances caused by Contractor cannot be performed, or if

performed, would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or

d. Request the removal from work on this contract of employees or agents of the Contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or

e. Terminate the Agreement for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

25. Limitation of State Liability. Notwithstanding anything herein to the contrary, no term or condition shall be deemed a waiver of any provision of the “Colorado Governmental Immunity Act”, 24-10-101, et. seq., C.R.S., as now or hereafter amended (“Immunity Act”), nor of the Risk Management self-insurance statutes at 24-30-1501, et. seq., C.R.S., as now or hereafter amended (“Risk Management Act”). The parties understand and agree that the liability of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of the Immunity Act and the Risk Management Act. Any provision of this Contract, whether or not incorporated herein by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of the State to the above cited laws. In no event will the State be liable for any special, indirect, or consequential damages, even if the State has been advised of the possibility thereof.

26. Inspections and Acceptance. The State reserves the right to inspect services and/or goods provided under this contract at all reasonable times and places during the term of the contract. “Services” as used in this clause includes services performed or tangible material produced or delivered in the performance of services. Contractor shall deliver any Deliverables and/or perform any Services in accordance with the schedule set forth in the SOW or the time specified in a Purchase Order (“PO”) issued by State (whichever is later). Unless otherwise agreed to by Contractor and State, Contractor shall provide written notification of completion of any Deliverables, or other performance of Services, to State (“Delivery Notice”). If any of the services and/or goods do not conform with contract requirements, the State may issue a rejection notice and require the Contractor to perform the services or provide goods again in conformity with contract requirements, at no additional cost to the State. The State shall have thirty (30) days from the date of receipt of the Delivery Notice to provide Contractor with written notification of acceptance or rejection due to unsatisfactory performance. Acceptance by State may only be accomplished by an affirmative act on the part of State pursuant to this Section and the failure of State to issue an acceptance notice shall not be deemed an acceptance of the Deliverables or Services or any portion thereof. State shall not unreasonably withhold or delay such acceptance or rejection. When defects in the quality or quantity of services and/or goods cannot be corrected by reperformance, the State may (1) require the Contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services and/or goods provided. These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

27. Termination-for-Convenience.

a. The State may, in its discretion, terminate this contract in whole or in part, at any time that the State determines that the purposes of the distribution of State moneys under this contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) day’s before the effective date of such termination. In that event, all finished or unfinished documents, data, studies,

surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this contract shall, at the option of the State, be delivered by the Contractor to the State and shall become the State's property. The Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and goods delivered. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified.

If this contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services satisfactorily performed bear to the total services of the Contractor covered by this contract, less payments of compensation previously made, provided, however, that if less than sixty percent (60%) of the services covered by this contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by the Contractor during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the Contractor, the termination for cause or default provision shall apply.

28. Survival of Certain Contract Terms. Notwithstanding anything in this contract to the contrary, the parties understand and agree that all terms and conditions of this contract which may require continued performance, compliance, or effect beyond the termination date of the contract and shall survive such termination date and shall be enforceable by the State as provided herein in the event of failure to perform or comply by the Contractor.

29. Personnel. Only designated and approved contractor personnel shall work on this contract. Contractor personnel shall sign non-disclosure statements and pass background checks before they will be allowed to work on this contract. The contractor shall be responsible for all associated costs. The State shall provide the appropriate documentation. The contractor shall insure that the key personnel, designated in Exhibit A, continue to provide the services and products, required by the State in Article one, for the duration of this Agreement. The contractor shall promptly notify the State when a key personnel will no longer perform the services. The contractor shall promptly provide a qualified replacement subject to State approval.

30. Holdover. In the event that the state agency desires to continue the services and a replacement contract has not been fully executed by the ending term date of this contract, this contract may be extended unilaterally by the state for a period of up to two months upon written notice to the contractor under the same terms and conditions of the original contract including, but not limited to prices, rates, and service delivery requirements. However, this extension terminates when the replacement contract becomes effective when signed by the State Controller or an authorized delegate.

31. Confidentiality. The Contractor acknowledges that it may come into contact with confidential information contained in the records of the State. The Contractor shall provide and maintain a secure environment that ensures confidentiality. The confidentiality of all information will be respected, and no confidential information shall be distributed or sold to any third party nor used by the Contractor or the Contractor's assignees and / or subcontractors in any way except as authorized by this contract. Confidential information shall not be retained in any files or otherwise by the Contractor. Disclosure of such information may be cause for legal action against the Contractor. Defense of any such action shall be the sole responsibility of the Contractor.

32. Compliance with Law. The Contractor agrees to strictly adhere to and comply with all applicable Federal, State, and Local laws, statutes, regulations, and executive orders, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this contract.

33. Modification and Amendment. This contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

34. Intellectual Property Escrow. Contractor agrees to deposit the software, documentation, and/or other related material(s) with a software escrow agent for the term of the agreement. Software is the source code accompanied by a running object code version submitted on a virus-free magnetic or optical media, compiled and ready to be read by a computer. Documentation is all materials sufficient for a trained computer programmer of general proficiency to maintain and support the software without further assistance from the contractor. The contractor shall also have a continuing obligation to deposit any maintenance modifications, updates, upgrades, new releases, or documentation related to the deposited materials.

Contractor agrees to enter an agreement with the escrow agent which will instruct the escrow agent to independently verify the operation of the running object code and cause delivery of the software, documentation, and all other related materials in his possession to the State/Licensee if any one of the following events occur:

1. Contractor agrees in writing to the delivery; or
2. Contractor ceases to do business and no successor shall have agreed to assume the contractor's obligations to the State/Licensee; or
3. Contractor has failed to support the software or has otherwise defaulted under this contract; or
4. Contractor files for liquidation under the U.S. Bankruptcy Code, or files for reorganization under the U.S. Bankruptcy Code and does not remain debtor in possession.

The Contractor will grant the appropriate licensee rights to the escrow agent to allow the agent to exercise his rights under this contract.

Contractor agrees that if the escrow agent delivers the software to the State/Licensee, the State shall have the same license and rights to use the software, documentation, and other related materials as the State had under the original contract, including the right to utilize the source code and create updates and derivative works consistent with the purposes of this contract.

All costs and fees associated with escrow agreement and this clause shall be the responsibility of the contractor.

35. Counterparts. This agreement may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same instrument. Execution may be effected by delivery of facsimiles of signature pages (and the parties will follow such delivery by prompt delivery of originals of such pages).

36. Warranty. Contractor warrants that in providing the Deliverables and performing the Services:

- a. Contractor will strictly comply with the descriptions and representations as to the Services (including performance, capabilities, accuracy, completeness, characteristics, specifications,

- configurations, standards, functions and requirements) which appear herein and Contractor and any employees of Contractor will perform the Services on time;
- b. In addition to any express and implied warranties provided to State under law or given under other provisions of this Agreement, Contractor hereby expressly warrants that the Services to be performed hereunder will be performed in a workmanlike manner, subject to the supervision and instructions provided by State, and that all work assigned will be performed in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time Services are provided;
 - c. Contractor's products, if any, will conform to generally applicable standards in the industry and Contractor shall use only new standard parts/materials or parts/materials equal in performance to new parts/materials unless otherwise agreed to in writing by State;
 - d. The Services will not be in violation of any applicable law, rule or regulation, and Contractor will obtain all permits and licenses required to comply with such laws and regulations;
 - e. The Services will not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any Intellectual Property rights. As used herein, "Intellectual Property" shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, test results, knowledge, techniques, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the foregoing, whether or not registered as of the Effective Date or at any later date;
 - f. Contractor is the lawful owner or licensee of all software, hardware, methods, methodologies and any pre-existing Intellectual Property used in the performance of the Services contemplated hereunder and the Contractor has the right to permit State access to or use of such software, hardware, methods, methodologies and Intellectual Property;
 - g. With respect to any Contractor personnel designated as "Key Personnel", the assignment of Contractor personnel to perform the Services will be continuous throughout the term of the Agreement, except where such personnel are unable to perform, including but not limited to illness, termination of employment, etc.;
 - h. Contractor shall assign to State the manufacturers' warranties for material furnished to State;
 - i. Contractor will screen all employees supplied to State to ensure that each employee is fully qualified to perform the Services, and if required by law or ordinance, is validly licensed and/or has obtained all requisite permits to perform such Services for State;
 - j. All Deliverables provided pursuant to this Agreement will interface, integrate and be functionally compatible with and will perform on any and all of State's hardware and software configuration(s) as provided for in the specifications;
 - k. All software and hardware Deliverables and any update or revision to any of the software and hardware Deliverables will be free from defects and will meet all specifications set forth in this Agreement and any documents referenced therein. Contractor warrants that the deliverables, as defined in this contract, will perform the functions substantially as described in this contract, for a period of _____ after delivery and acceptance. All equipment and supplies furnished under this contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturer's recommendations or other industry standards, and will function in a failure-free manner for a period of _____ from the date of installation and acceptance. Contractor will, without charge to the State, correct any defects and make any additions, modifications or adjustments to any of the Deliverables or any update or revision to any software Deliverables as may be necessary to keep the Deliverables in operating order in accordance with specifications at all times during the agreed upon applicable warranty period. Additionally, contractor agrees to assign to the State all written manufacturer's warranties relating to the hardware and to deliver such written warranties to the State.

37. Cooperation and Transition of Services.

- a. In the event that the State has entered into or enters into agreements with other contractors or government institutions for additional work related to the Services provided hereunder, the Contractor agrees to cooperate fully with such other parties.
- b. Upon expiration or earlier termination of this Agreement or any Services provided hereunder, Contractor shall accomplish a complete transition of the Services from Contractor to the State, or to any replacement provider designated by the State, without any interruption of or adverse impact on the Services or any other services provided by third parties. Contractor shall cooperate fully with the State or such replacement provider and promptly take all steps required to assist in effecting a complete transition. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services hereunder.
- c. Contractor shall not commit any act that will interfere with the work performed by any third party as set forth herein.
- d. Optional – The system integrator will provide independent certifications for each of the system components/products that verify that the product has properly been installed in the system and is operating in accordance with the manufacturer's instructions. (Steve Uretsky)

38. Compliance with Laws and State of Colorado Policies.

- a. Contractor shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, rules and regulations. Contractor also shall comply, and shall require its employees to comply, with all applicable State policies and standards in effect during the performance of this Agreement, including but not limited to State policies and standards relating to personnel conduct, security, safety, confidentiality and ethics.
- b. Certain equipment, software and technical data which may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the U.S. or any other country. Contractor shall be responsible for complying with all export and re-export laws and regulations including without limitation, (i) local license or permit requirements, (ii) export, import and customs laws and regulations (such as the export and re-export controls under US Export Administration Regulations and/or similar regulations of the US or any other country) which may apply to certain equipment, software and technical data provided hereunder, and (iii) all applicable foreign corrupt practices acts.
- c. Contractor shall obtain and maintain, and shall cause its subcontractors to obtain and maintain all approvals, permissions, permits, licenses, and other forms of documentation required in order to comply with all applicable foreign or domestic laws, rules or regulations.
- d. Contractor agrees that any failure by Contractor or Contractor's employees to comply with any of the obligations of this Section may be treated by the State as a material breach of this Agreement by Contractor.

39. Title and Risk of Loss. Title and risk of loss for the Deliverables shall remain with the Contractor until they are accepted by the State. Insurance during shipment and until the Deliverables are accepted by the State is the responsibility of the Contractor. All risk of loss or damage to the Deliverables, until accepted by the State in accordance with Section 27 above, including risk of transit, shall be Contractor's.

40. Publicity. Contractor shall not release without the State's prior written approval any publicity regarding the program or Services provided herein, including but not limited to, notices, information, pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contractor, identifying the State of Colorado, the State agency receiving goods or services under this Agreement; however, Contractor may reference this Agreement in proposals for other contracts without the State's approval.

- 41. Non-exclusivity.** This Agreement is entered into solely for the convenience of the State of Colorado, and in no way precludes the State or any of its user agencies from obtaining like goods from other suppliers. Such approval shall be made at the sole discretion of the State, and shall be conclusive. Such approval shall only be granted when it is deemed to be in the best interest of the State to do so.
- 42. Time is of the Essence.** Time is of the essence with regard to performance of any Services under this Agreement, unless the parties agree otherwise in writing.
- 43.** When the Contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the Contractor shall be liable for \$_____ per calendar day from date set for cure until either the State reasonably obtains similar goods or services if the Contractor is terminated for default, or until the Contractor provides the goods or services if the Contractor is not terminated for default. To the extent that the Contractor's delay or nonperformance is excused under Article ____ of the contract or the Termination for Default clause of this contract, liquidated damages shall not be due the State. The parties agree that the damages from breach of this contract are difficult to prove or estimate, and the amount of liquidated damages specified herein represents a reasonable estimation of damages that will be suffered by the State from late performance, including costs of additional inspection and oversight, and lost opportunity for additional efficiencies that would have attended on-time completion of performance. Assessment of liquidated damages shall not be exclusive or in any way limit remedies available to the State at law or equity for contractor breach.

[Add SPECIAL PROVISIONS and SIGNATURE PAGE from State Controller's website.]